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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**  
9

10 Manuel Bernal, husband, individually )  
11 and on behalf of Kevin Bernal, their )  
minor son, et al., )

12 Plaintiffs, )

13 vs. )

14 Daewoo Motor America, Inc., a )  
15 Delaware corporation, et al., )

16 Defendants. )  
17

No. CV09-1502 PHX-DGC

**ORDER**

18 Daewoo Motor America, Inc. (“Daewoo America”) asks the Court to reconsider its  
19 recent order denying in part Plaintiffs’ motion to strike their affirmative defenses. Dkt. #35.  
20 Daewoo America argues that Court prematurely decided which law governs this case.

21 Motions for reconsideration are disfavored and should be granted only in rare  
22 circumstances. *See Stetter v. Blackpool*, No. CV 09-1071-PHX-DGC, 2009 WL 3348522,  
23 at \*1 (D. Ariz. Oct. 15, 2009). Courts in this district have identified four circumstances  
24 where a motion for reconsideration will be granted: (1) the moving party has discovered  
25 material differences in fact or law from those presented to the Court at the time of its initial  
26 decision, and the party could not previously have known of the factual or legal differences  
27 through the exercise of reasonable diligence, (2) material factual events have occurred since  
28 the Court’s initial decision, (3) there has been a material change in the law since the Court’s

1 initial decision, or (4) the moving party makes a convincing showing that the Court failed to  
2 consider material facts that were presented to the Court at the time of its initial decision. *See*,  
3 *e.g., Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz.  
4 2003).

5 In their motion to strike, Plaintiffs argued that Daewoo America's affirmative  
6 defenses should be stricken under Arizona law. *See* Dkt. #19 at 4-7. In response, Daewoo  
7 America analyzed Arizona's choice of law rules and argued that Arizona law should not  
8 apply. Dkt. #20 at 3. Plaintiffs responded to this argument in their reply. Dkt. #22 at 3-5.  
9 The choice of law issue was thus clearly presented to the Court for decision.

10 Daewoo America never argued, as it does now, that consideration of the choice of law  
11 issue and the motion to strike should be postponed until further discovery is conducted or  
12 additional parties are brought into the case. The Court need not consider these arguments  
13 made for the first time in a motion for reconsideration. *Martinez-Vazquez v. INS*, 346 F.3d  
14 903, 905 n.5 (9th Cir. 2003).

15 Daewoo America also argues that the Court should not have considered matters  
16 outside the pleading when deciding the motion to strike. Dkt. #35 at 2. In its response,  
17 however, Daewoo America asked the Court to consider the "most critical information as to  
18 where the accident occurred" – information, it claimed, that was "purposely omitted" from  
19 the complaint. Dkt. #20 at 3. Moreover, even if the Court considered only the specific  
20 allegations in the complaint – that Plaintiffs are residents of Maricopa County, Arizona and  
21 that Daewoo America does business in Arizona – the Court still would have determined that  
22 Arizona law applies. "Arizona courts traditionally have accorded great weight in the  
23 conflicts analysis to the domicile of the tort victim in a personal injury case." *Garcia v. Gen.*  
24 *Motors Corp.*, 990 P.2d 1069, 1075-76 (Ariz. App. 1999); *see Baroldy v. Ortho Pharm.*  
25 *Corp.*, 760 P.2d 574, 580 (Ariz. App. 1988) (holding that, because "plaintiffs are Arizona  
26 domiciliaries," Arizona law should apply even when the injury did not occur in Arizona, the  
27 conduct causing the injury did not occur in Arizona, and the relationship between the parties  
28 was centered in North Carolina).

**IT IS ORDERED** that Daewoo America's motion for reconsideration (Dkt. #35) is **denied**.

DATED this 3rd day of December, 2009.

David G. Campbell

David G. Campbell  
United States District Judge